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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/823,325 | 04/13/2004 | William W. Jeswine | 1740-1-13 | 4475 |

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EXAMINER

DEPUMPO, DANIEL G

| ART UNIT | PAPER NUMBER |
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3611

DATE MAILED: 02/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/823,325

Applicant(s)

JESWINE ET AL.

Examiner

Daniel G. DePumpo

Art Unit

3611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 39-78 is/are pending in the application.
- 4a) Of the above claim(s) 39-48 and 50-78 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/13/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Art Unit: 3611

1. Applicant's election with traverse of Group IV, species B, species i and species a (claim 49 readable thereon) in the reply filed on 12/20/04 is acknowledged. The traversal is on the ground(s) that Group IV (claim 49) and Group X (claim 78) can allegedly be examined without serious burden. This is not found persuasive because the restriction requirement has determined that the inventions are distinct and have acquired a separate status in the art. This establishes a *prima facie* case of a serious burden on the office.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 39-48 and 50-78 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 12/20/04. It is noted that the traversal was directed to claim 78 only.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 49 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 49 is considered to end after the period (.) in line 8. It is noted that there are five lines of miscellaneous text after the period of claim 49. It is unclear whether these five lines are intended to be part of claim 49, or if they are part of non-existent claims 76-77 (as originally numbered). In response to the restriction requirement, applicant seems to suggest that the five lines are part of claim 49. (It is noted that in the claims as originally presented, the five lines end with a semi-colon. Applicant has changed the semi-colon to a period in the response to the

Art Unit: 3611

restriction requirement). Nevertheless, these five lines recite "a steering sprocket" (among other elements). The steering sprocket is disclosed as element 188 which is part of the traction unit 22 depicted in fig. 6. Elected claim 49 recites "a bogie assembly" which is disclosed in figs. 7a and 7b. The steering sprocket of the traction unit does not appear to be disclosed as being part of the bogie assembly.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 49 is rejected under 35 U.S.C. 102(b) as being anticipated by Jung (GB 2,248,428).

Jung teaches a device having the structure as claimed. As shown in figs. 15 and 16, the bogie is retractable. As shown in figs. 2 and 3, the device includes various drive shafts and a steering sprocket 36.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel G. DePumpo whose telephone number is 703 308-1113.

The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 703 308 1113. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3611

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Daniel G. DePumpo
Primary Examiner
Art Unit 3611

dgd
2/1/05